

REMARKS

Election of Claims

Responsive to the Restriction Requirement dated January 22, 2004, the Claims of Group I (Claims 1- 9 and 14) drawn to a mechanical securing means of a hearing aid housing are elected for prosecution, with traverse. Applicant reserves the right to file a continuing application or take such other appropriate action as deemed necessary to protect the non-elected inventions. Applicant does not hereby abandon or waive any rights in the non-elected inventions. Applicant respectfully traverses the Restriction between the Claims of Group I (Claims 1-9, 14) and Group III (Claim 13), and requests rejoinder of these claims for examination.

Applicant traverses on the grounds that the Examiner has failed to make an appropriate showing that the claims of Group I and Group III are distinct. As the Examiner notes, the inventions are distinct if it can be shown that (1) the process as claimed can be used to make other and materially different product or (2) the product as claimed can be made by another and materially different processor (MPEP §806.05(f)). In this case, however, the only support for restriction provided by the Examiner is that “the process can be performed by a different means.” It is unclear what is meant by the “the process” and the “different means.” The Group I claims recite a hearing aid, and the Group III claims recite a method for manufacturing a hearing aid. Accordingly, it is respectfully submitted that this showing is insufficient to demonstrate that the presently claimed hearing aid (Group I) and method for manufacturing a hearing aid (Group III) are distinct.

Furthermore, due to close similarity in subject matter between the Group I and Group III claims, it is respectfully submitted that the Examiner cannot show the requisite “serious burden” in the search and examination of these two groups, and rejoinder of these groups for examination is requested (MPEP §803).

Claim Amendment

Applicants have amended Claims 1, 7 and 13 to alternatively characterize the present invention. Applicants have amended Claim 14 to correct an error in claim dependency. Specifically, Claim 14 has been amended to properly depend from independent method Claim 13. No new matter has been added.

CONCLUSION

In view of the above amendments and remarks, it is believed that all claims are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned.

Respectfully submitted,

HAMILTON, BROOK, SMITH & REYNOLDS, P.C.

By Kevin T. Shaughnessy

Kevin T. Shaughnessy

Registration No. 51,014

Telephone: (978) 341-0036

Facsimile: (978) 341-0136

Concord, MA 01742-9133

Dated: 3/22/04